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硕 士 学 位 论 文

人格标识的商品化权研究

**The Research on Merchandising Right of Personality
Identification**

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内 容 摘 要

在商业社会中，未经权利人允许将他人的姓名、肖像、名称等人格标识进行商品化利用的行为屡见不鲜，由此引起的纠纷亦屡见报端。明星以侵犯姓名权、肖像权为由状告商家的纠纷并不少见，正是这些纠纷使人们把目光关注到本文的研究主题——人格标识的商品化权。

人格权在我国没有被作为单独的法律部门进行规定，在现实生活中，将人格标识投入商业化利用的现象司空见惯。本文尝试借鉴国外立法与司法经验和综合分析学者的各种学说的基础上，提出我国法律框架下人格标识商品化权的保护模式和路径，以期能对我国相关领域的理论、实务有一定的参考意义。

文章一共分为四章：

第一章对商品化权的概念、法律性质等做一个分析探讨；再从社会经济基础与理论基础两个方面出发，分析人格标识商品化权的正当性，运用法经济学、伦理学等分析角度。

第二章介绍国内外人格标识商品化权的保护模式，如美国的“二元论”的保护模式，德国的人格权内部的“一元论”保护模式等，从而为我国的人格标识商品化权保护提供参考意见；并简要介绍我国大陆几个民法典学者草案中有关人格标识商品化权的规定，尝试作比较分析。

第三章分析人格标识商品化权的法律关系，从主体、客体、利用模式三个层面出发进行简要分析。

第四章论述我国当前对人格标识商品化权的立法规定，通过具体案例的实证分析，人格标识商品化权纠纷实际上是涉及商业利益的纠纷，有经济损失就有如何进行赔偿的问题，文章力图穷尽现有法律下赔偿请求权的不同方式，综合一般财产保护模式、精神损害赔偿模式和知识产权保护模式等，尝试构建比较完善的法律保护模式。

关键词：人格标识；商品化权；法律保护

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ABSTRACT

In modern society, without the consent of the holders, their personality identification factors such as name, portrait that are applied to business behavior. The resulting dispute we see an endless. It is common to see that stars take suits to merchants in the thing of infringement of the right of name. Which makes people focus attention to the topic of this article - The research on the right of merchandising of personality identification.

In our country, there doesn't exist the special legislation in the view of the personality right. In real life, the phenomenon of the commercialization of personality identity is already very common. This paper tries to draw lessons from foreign legislative experience and comprehensively analyze the various theories of scholars, in order to have certain reference significance that will be related to our country in the field of theory and practice.

The article is divided into four parts:

The first part is talking about the concept, legal nature on the right of merchandising; From social economic foundation and theoretical basis to analyze the legitimacy, using the point view of economics and ethics.

The second part is talking about foreign patterns, such as American' dualism protection mode of combining, Germany the unified rights protection mode, thus to provide the beneficial reference for our country's legislation and judicial practice, and a brief introduction to the Chinese mainland in the draft civil code of several scholars on the provisions of the personal identification commercialization, trying to make an analysis.

Third analyzes the legal relationship, from three aspects: subject, object, and pattern.

The fourth part is aim to give protection to the right of commercialization of personality identity through the current law and special cases. Commercialization of disputes in its essence is still the economic interests of the disputes, when given the economic loss then there will be the problem that how to compensate, the article tried to end of compensation under the present legal ways, takes general property protection mode, compensation for mental damage and the protection of

intellectual property rights etc into consideration, tries to establish comparatively perfect legal protection path.

Key Words: Personality Identification; Merchandising Right; Legal Protection

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